In the High Court of Punjab and Haryana at Chandigarh

ITA No. 107 of 2007

Date of Decision: 23.04.2007

The Commissioner of Income Tax-III, Ludhiana …Appellant

Versus

M/s Nahar Exports Ltd., Ludhiana …Respondent

**CORAM: HON'BLE MR. JUSTICE M.M. KUMAR**

**HON'BLE MR. JUSTICE RAJESH BINDAL**

Present: Mr. Sanjiv Bansal, Advocate,
for the appellant-revenue.

**ORDER**

**M.M. KUMAR, J.**

The instant appeal filed under Section 260A of the Income Tax Act, 1961 (for brevity, 'the Act'), has been directed against the order dated 31.7.2006, passed in ITA No. 752/Chandi/2000, in respect of assessment year 1996-97. The revenue has claimed that following substantial question of law would arise for determination of this Court:-

> Whether on the facts and the circumstances of the case, the ITAT was right in law in allowing normal claim of deprecation on machinery which was not used at all for business purposes throughout the year under consideration under section 32 of I.T. Act, 1961?

While dealing with exactly the same question of law in the case of **The Commissioner of Income Tax-III, Ludhiana v. M/s Oswal Woolen Mills Ltd., Ludhiana (ITA No. 552 of 2006 and**

**another connected ITA No. 555 of 2006, decided on 5.4.2007)**, we decided the issue against the revenue and observed as under:-

> "……it is settled that even if new machinery installed by the assessee has not been put to use it would not disentitle the assessee from claiming depreciation under Section 32. Once the machinery is purchased and installed it starts depreciating and merely because it has not been put to use, the machinery would not be treated as new. There may be various reasons for not actually using the machinery, which was kept ready for use. We are further of the view that once the machinery leaves the premises of the manufacturer, it would not fetch the same price that has been paid by the assessee nor there is anything placed on record to show that the value of the machinery would remain static. Therefore, we find that the issue raised by the revenue is covered by the Division Bench judgment of this Court in the case of PEPSU Road Transport Corporation (supra) *[Commissioner of Income Tax v. PEPSU Road Transport Corporation, (2002) 253 ITR 303]*, which has gone against the revenue. ……"

In view of above, the instant appeal fails and the same is dismissed.

**(M.M. KUMAR)**
**JUDGE**

**(RAJESH BINDAL)**
**JUDGE**

**April 23, 2007**
Pkapoor